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IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 2253 of 1998

For Approval and Signature:

Hon'ble MR.JUSTICE M.S.SHAH

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
2. To be referred to the Reporter or not?
3. Whether Their Lordships wish to see the fair copy of the judgement?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge?

BHIM VAKANKI, CHORUS COMMUNICATION

Versus

UNION OF INDIA

Appearance:

MR PR NANAVATI for Petitioner

MR GM JOSHI for Respondent No. 8 and 16.

MR RC JANI for Respondent No. 5

MR MEHUL RATHOD for Respondent No. 7, 9 and 20.

CORAM : MR.JUSTICE M.S.SHAH

September 4 ,1998

C.A.V. JUDGEMENT

These two petitions under Article 226 of the Constitution challenge the decision of the Director General, Doordarshan allotting 52 Episodes commissioned under the "Commissioned Programme Scheme for Celebration of Fifty Years of Independence of India" in the second phase to respondents nos. 7 to 24 and for consequential

reliefs.

2. When 52 Episodes in the first phase were allotted by the respondents to certain persons that allotment came to be challenged in Special Civil Application No.2597 of 1997. That Special Civil Application came to be disposed of by a Division Bench of this Court on 17-4-1997 in view of the statement made by the learned Senior Counsel of the statement made by the learned Senior Standing Counsel for the Union of India that-

" Fresh proposals for commissioned programmes on various subjects including subject of 50th Anniversary of India's Independence and allied subject will be accepted from those producers who were not already given assignment in the month of March 1997. Proposals thus received upto 30th April 1997 will be processed and finalised as expeditiously as possible. Their programmes will be treated at par with the commissioned programmes already contracted. It has been decided to prepare a panel of producers/directors as provided in the guidelines forthwith for future reference. The Director, Doordarshan Kendra, Ahmedabad, will set up an Evaluation Committee as provided in para 17 of the Guidelines.

The proposals that may now be received will be considered for selection in light of the evaluation by the Evaluation Committee. The programmes already contracted will also be subject to evaluation by the said Evaluation Committee in so far as all the remaining stages are concerned. It is also made clear that payments will be subject to release of funds in view of the pendency of the budget."

In view of the aforesaid arrangement which had universal consensus, the petition was not pressed and permitted to be withdrawn at that stage with clarification that if there was any difficulty in implementation of the said arrangement any party was at liberty to apply.

3. Hence the respondent authorities invited applications for the second phase of the commissioned programme for celebration of Fifty years of Independence. In this second phase also 52 Episodes were to be

allotted. Alongwith others, the two petitioners herein Bhim Vakani and Nimesh Desai of Chorus Communication who are producers and directors of T.V.films, feature films, documentary and other activities connected with electronic media- also applied.

The Evaluation Committee, consisting of the following experts:

1. Prof. H.N.Pathak
2. Dr. Chandrakant Mehta
3. Prof. Ramesh Dave
4. Shri Bakul Tripathi
5. Mrs. Brahmagna Trivedi

considered 216 proposals out of which it selected 37 proposals including the petitioners' proposals for 70 Episodes on different subjects. The list of proposals selected by the Evaluation Committee thus consisted of 37 proposals with details about the name or banner of the producer, track record, Subject, Format, number of episodes proposed by the producer and the number of episodes recommended by the Evaluation Committee. The proposals selected by the Evaluation Committee were sent by the Director, Doordarshan Kendra, Ahmedabad to the Director General Doordarshan, New Delhi for final shortlisting of the episodes for selection of 52 Episodes out of 70 Episodes recommended by the Evaluation Committee. The Controller of Programmes by his letter dated 3-2-1998 informed the Director, Doordarshan Kendra, Ahmedabad that the proposals of respondents nos. 7 to 24 were approved by the Directorate for 52 Episodes mentioned against the names of the respective producers.

It is the aforesaid decision which is being challenged in the present petition. Affidavit-in-reply is filed by T.R. Malakar, Deputy Director General, Doordarshan, New Delhi, who was Chairman of the Committee which made the final selection as aforesaid.

4. On 8-5-1998 this Court issued Rule on the petitions but refused to grant interim relief. The matter was carried in appeal and by order dated 14-7-1998 the LPA Bench while disposing of the appeal as not pressed, observed that the matters require final hearing in priority. Accordingly the petitions have been finally heard together as common questions of law and facts are involved and are being disposed of by this common

judgment.

5. At the hearing of these petitions Mr.Girish Patel with Mr.A.Y.Kogje learned Counsel for the petitioners in SCA No.2279/98 and Mr.N.D.Nanavati with Mr.P.R.Nanavati, learned Counsel for the petitioners in SCA No.2253/98 have made the following submissions:

(1). The petitions involve serious question about the citizens' right of freedom of speech and expression. Such freedom is now held to be available even in respect of the medium of T.V. Reliance is placed on the decisions of the Apex Court in the cases of -

K.A.Abbas Vs. The Union of India & anr.
AIR 1971 SC 481,

Odyssey Communications Pvt.Ltd. Vs. Lokvidayan
Sanghatana and ors. AIR 1988 SC 1642,

S.Rangarajan Vs. Jagjivan Ram and ors.
(1989) 2 SCC 574,

AIR 1995 SC 1536.

Relying on the judgment in the case of Life Insurance Corporation of India Vs. Manubhai D.Shah, AIR 1993 SC 171, it is also contended that the freedom of speech and expression also includes the freedom of expression through the public media.

(2). The freedom of speech and expression also includes the freedom of getting views. The citizens have right to access to different sources of information and views and also have a right to choose from amongst them.

(3). In the matters of mass media, there cannot be any secrecy. There must be fairplay and transparency in the selection of proposals for transmission of news and views through the public media. In the instant case the authorities have not placed on record the record of the Evaluation Committee or the record of the Committee which took the final decision for selecting 18 proposals for 52

Episodes out of 37 proposals for 70 Episodes recommended by the Evaluation Committee and hence the impugned action is arbitrary and violative of the petitioners' fundamental rights under Articles 14 and 19 of the Constitution.

6. On the other hand Mr. R.C.Jani, learned Additional Standing Counsel for respondents nos. 1 to 5 and Mr. Gautam Joshi and Mr. Mehul Rathod for some of the contesting respondents have made the following submissions:

- (1). When there is no allegation of malafides or ill will, challenge to selection of particular episodes or non-selection of the petitioners' episodes is not at all justiciable. Reliance is placed on the decision of the Apex Court in *Fasih Chaudhary Vs. Director General, Doordarshan*, 1989(1) SCC 89.
- (2). The Evaluation Committee consisted of the five experts whose names are already mentioned above and who are well known in their fields of specialization. Once the Evaluation Committee selected 37 proposals for 70 Episodes without giving any inter se ranking and recommending all of them as suitable, and since Phase II programme for celebration of 50th year of Independence of India had 52 episodes, some decision was required to be taken by the authorities as per the guidelines which are produced at Annexure C to the petition and accordingly a committee of Prasar Bharti, New Delhi, consisting of experienced Deputy Director Generals of Doordarshan, selected 18 proposals for 52 episodes and therefore, there was no arbitrariness in the decision making process.
- (3). The Evaluation Committee had selected the proposals of 37 producers on different subjects. The shortlisting Committee was required to ensure that a large number of subjects having relevance to the theme of celebration of 50 years of Independence were required to be selected and therefore, non-selection of proposal of the petitioners did not amount to casting any aspersion on their ability or skill, nor did it amount to rejection of their proposals warranting communication of reasons for rejection of a

proposal.

(4). This Court in exercise of the Writ jurisdiction would not sit in appeal over the decision of the Evaluation Committee and the shortlisting Committee of the Directorate of Doordarshan.

7. Before dealing with the contentions urged on behalf of the petitioners and submissions made on behalf of the respondents, it is necessary to point out that although the affidavit-in-reply filed on behalf of respondent no.1, did not contain any details as to how the Evaluation committee had considered the matter, this Court had called upon Mr.Jani for the respondent authorities to show the record of the Evaluation Committee for perusal and also to produce on record of these proceedings the particulars of the proposals selected by the Evaluation Committee as suitable and the material which was considered by the shortlisting Committee of the Doordarshan Directorate, New Delhi. The record of the Evaluation Committee did not contain any inter se ranking of the 37 proposals found by it to be suitable and the same was also shown to the learned Counsel for the petitioners at the previous hearing . The list of the 37 proposals selected by the Evaluation Committee which were considered by the shortlisting Committee of the Doordarshan Kendra, New Delhi was produced on record and copy thereof was also made available to the learned Counsel for the petitioners. Similarly, copy of the letter dated 26-12-1997 from the Director, Doordarshan Kendra, Ahmedabad to the Director General of Doordarshan and the letter dated 3-2-1998 from the Controller of Programmes to the Director, Doordarshan kendra, Ahmedabad were also produced on record and copies thereof were also made available to the learned Counsel for the petitioners.

8. Having heard the learned Counsel for the parties, after considering the material on record and having given anxious thoughtful consideration to the rival contentions, this Court is of the view that in the facts and circumstances of the present case, it is not necessary to express any opinion on the larger questions raised by the learned Counsel for the petitioners or to express any opinion on the preliminary contention raised on behalf of the respondents about the justiciability of the selection of the episodes.

There is no dispute about the fact that the Evaluation Committee had selected the proposals of the

present petitioners - Bhim Vakani and Chorus Communication (Nimesh Desai). There is also no dispute about the fact that the Evaluation Committee selected 37 proposals for 70 episodes although Phase II of the commissioned programme is to have only 52 Episodes. No reasons are forthcoming as to why the Evaluation Committee recommended 70 Episodes of 37 Producers without giving any inter se ranking to the selected proposals or without placing the suitable proposals and episodes into two lists - one list of 52 suitable episodes in the select list and the other list of 18 suitable episodes in the waiting lists. It is also required to be noted that the amount to be paid by the Doordarshan to the producers was already fixed at Rs. 2 lacs per episode. Hence the Evaluation Committee was not required to take into account any financial consideration. The respondents are, therefore, justified in contending that some exercise was required to be undertaken for shortlisting 52 episodes out of 70 episodes and that therefore, the respondent authorities selected the proposals with the following 18 subjects :

No.of
Episodes.

1. Portrayal of Women Characters
in Gujarati Literature. 3
2. Kandla Port. 2
3. Plays on Freedom Struggle. 4
4. Energy conservation, 4
5. Woman - Kitchen to Panchayati Raj. 4
6. Peasant Movement. 3
7. Wild Life. 4
8. Geology & Tourism of Kutch. 2
9. Child Education. 4
10. Sanskar Badlo, 2
11. Hindu Muslim Unity. 4
12. Kapad Udyog. 2

13. Fairs and Festivals of Tribe. 2
14. Children & education System. 4
15. Environment/Science. 2
16. Dream Village of Gandhiji. 2
17. Rural Industries, 2
18. Jyotirdhar. 2

Looking to the aforesaid subjects for which the proposals of the concerned producers have been selected, it cannot be said that the subjects are irrelevant to the theme of celebration of 50 years of Independence. All the 18 producers whose proposals on the aforesaid subjects have been selected for 52 episodes in all, were already found suitable by the Evaluation Committee of five experts from outside the Doordarshan. The petitioners in Special Civil Application No.2279 of 1998 - Chorus Communication - had submitted the proposal for five episodes on Environment. Petitioner in Special Civil Application No.2253/98 had submitted the proposal for five episodes on "Bandhan Mukti Novel on Freedom struggle" .

8. In view of the settled legal position that in judicial review of administrative action, this Court does not sit in appeal over the decision of the administrative authorities, it is not possible to find fault with the decision of the respondent authorities in selecting 18 proposals out of 37 proposals found suitable by the Evaluation Committee, particularly when the Evaluation Committee had found all the 37 proposals as suitable without giving any inter se merit order or without placing the suitable proposals and episodes into two lists - 52 suitable episodes in the select list and the other 18 suitable episodes in the waiting listfs. Even assuming that the Court can interfere in such matters, the Court has thought it fit not to direct the authorities to send the proposals back to the Evaluation Committee, as a period of more than one year has already elapsed since the Evaluation Committee had considered the matter and the implementation of the commissioned programme has been delayed on account of successive litigations. The present petitions were filed after another T.V. producer Harshjeet Thakkar failed to get an injunction from the City Civil Court, Ahmedabad against implementation of the decision impugned herein, in Civil

Suit No. 723 of 1998 which was filed on 13-2-199. When the plaintiff therein filed a pursis for withdrawing that suit some other persons applied for being substituted as plaintiffs. The learned Counsel for the contesting respondents have, therefore, made a legitimate grievance that inspite of refusal of interim relief in these petitions, the respondent authorities have not implemented the impugned decision. Mr.Jani for the authorities has submitted that it is only on account of pendency of these two petitions that the authorities have not implemented the impugned decision.

9. The contention of the learned counsel for the petitioners that the respondent authorities ought to have filed an affidavit to explain why these particular 18 proposals were selected out of 37 proposals found suitable by the Evaluation Committee is a contention which cannot be accepted because some free play in the joints has to be left to the administrative authorities. When no allegations of malice or ill will are made against any person, this Court in exercise of its jurisdiction under Article 226 of the Constitution is not expected to require the authorities to justify their decision on merits especially when the proposals of respondent nos. 7 to 24 were found suitable by the Evaluation Committee consisting of experts outside the Doordarshan and the subjects are found to be quite relevant to the theme of the commissioned programme on the celebration of fifty years of Independence. Different considerations would have arisen if the Evaluation Committee had given inter se merit order and the administrative authorities had disturbed the merit order given by the Evaluation Committee. Since that is not the case here, it is not necessary for the Court to examine the larger questions raised by the learned Counsel for the petitioners.

10. The learned Counsel for the petitioners had earlier attempted to build up their case on the basis of certain allegations made in the letter (without dateAnnexure C to the Memo of Special Civil Application No.2279/98) from Ms. Mallika Sarabhai of Darpan Academy to Mr.Gill, the then CEO, Prasar Bharti. While one episode out of four episodes proposed by Darpan Academy on Women Personalities was found to be satisfactory by the Evaluation Committee, Ms. Sarabhai castigated the selection of five producers and others as persons with questionable track records, although the Evaluation Committee had opined that the track records of all 37 producer4s were satisfactory. Proceeding on the basis of the said letter at its face value would, therefore, shake

the credibility of the entire selection made by the Evaluation Committee, including the selection of the two petitioners herein. Hence the argument was not pursued any further.

11. In view of the aforesaid discussion, both these petitions are dismissed with no order as to costs. Rule in each petition is discharged.

12. A copy of this judgment shall be sent by the Director, Doordarshan, Ahmedabad to all the members of the Evaluation Committee while sending proposals for selection for other programmes to be commissioned in future.

(M.S.Shah J.)

At this stage, the learned Counsel for the petitioners pray for stay of operation of this judgment for some time in order to have further recourse in accordance with law. In view of the fact that even while admitting the petitions on 8-5-1998, interim relief was refused and the Letters Patent Appeal filed by the petitioners against the said order was not pressed and in view of the facts and circumstances of the case, the request is not granted.

(M.S.Shah J.)